

**NOT FOR PUBLICATION**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

FRADELL McCULLOUGH, et al.,	:	CIVIL ACTION NO. 10-314 (MLC)
	:	
Plaintiffs,	:	<b>O P I N I O N</b>
	:	
v.	:	
	:	
GARY LOCKE, et al.,	:	
	:	
Defendants.	:	
_____	:	

**THE PLAINTIFFS** brought this action challenging a final rule issued as Amendment 11 to the Atlantic Sea Scallop Fishery Management Plan, 73 Fed. Reg. 20090-20133 (Apr. 14, 2008). (Dkt. entry no. 1, Compl. at 2.) The Plaintiffs allege that the Defendants' adoption of Amendment 11 violates the Fifth Amendment of the United States Constitution; the Administrative Procedures Act, 5 U.S.C. §§ 701-706; the Regulatory Flexibility Act, 5 U.S.C. §§ 601-612; the Magnuson-Stevens Fishery Conservation and Management Act of 2005, 16 U.S.C. § 1801 et seq.; and the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, 16 U.S.C. § 1801 et seq. (Id.)

**THE COURT** entered an order on July 8, 2010, staying and administratively terminating this action on the ground that it concerns claims that are duplicative of the claims brought in General Category Scallop Fishermen v. Locke, No. 08-2264 (MLC) ("First Action"). (Dkt. entry no. 10, 7-8-10 Order.) The

plaintiffs' appeal from the Court's entry of judgment in favor of the defendants in the First Action was at that time pending before the United States Court of Appeals for the Third Circuit ("Court of Appeals"). The Court, in administratively terminating the action, granted the Plaintiffs leave to move to reopen the action within twenty days of a resolution of the appeal in the First Action. (7-8-10 Order at 4.)

**THE COURT OF APPEALS** issued an opinion on March 16, 2011, affirming this Court's grant of summary judgment in favor of the defendants in the First Action. See General Category Scallop Fishermen v. Locke, 635 F.3d 106 (3d Cir. 2011). The Court of Appeals denied plaintiffs' request for a rehearing en banc on April 28, 2011. (See dkt. entry no. 13, 10-7-11 Order at 2.)

**THE PLAINTIFFS** moved to reopen the action on July 27, 2011. (Dkt. entry no. 11, Mot. to Reopen.) The Court denied the motion to reopen the action as untimely. (10-7-11 Order at 2.) However, the Court granted the Plaintiffs leave to move before the Magistrate Judge for leave to file an amended complaint, and indicated that (1) such motion should address the preclusive effect, if any, of the judgment in the First Action, and (2) if the Plaintiffs did not so move within thirty days of entry of the 10-7-11 Order, the Court would dismiss the action with prejudice. (Id. at 2-3.)

**THE DEFENDANTS** now request that the Court dismiss the action with prejudice, pursuant to the 10-7-11 Order, on the grounds that the Plaintiffs have not moved for leave to file an amended complaint within the time allowed. (Dkt. entry no. 14, Notice & Request for Dismissal.)

**THE COURT** finds that the Plaintiffs have not complied with the instructions of the 10-7-11 Order in the time allowed. For good cause appearing, the Court will grant the Defendants' request. The Court will issue an Order and Judgment separately.

s/ Mary L. Cooper  
**MARY L. COOPER**  
United States District Judge

Dated: November 15, 2011